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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1180002

Ex parte State of Alabama

PETITION FOR WRIT OF MANDAMUS

(In re: State of Alabama

v.

Mandy Nicole Brady)

(Mobile Circuit Court, CC-18-834)

BRYAN, Justice.

The State of Alabama petitions this Court for a writ of mandamus directing the Mobile Circuit Court ("the circuit

1180002

court") to vacate an order entered on September 24, 2018, in which the circuit court purported to hold certain statutes and acts of Alabama unconstitutional and required the Mobile circuit clerk to withhold 10% of the funds collected as court costs and fees from litigants in Mobile County until such time as the State has adequately funded the clerk's office.

Facts and Procedural History

This petition arises from a criminal proceeding pending in the circuit court. A Mobile County grand jury indicted Mandy Nicole Brady for trafficking in methamphetamine, a violation of § 13A-12-231(11)(a), Ala. Code 1975. The materials before this Court indicate that Brady posted bond on that charge and was released; however, she was subsequently arrested on a new charge, and the State moved to revoke her bond in the underlying criminal action. The circuit court granted the State's motion and revoked Brady's bond on August 16, 2018. Despite the fact that Brady was in State custody when the circuit court revoked the bond, Brady did not appear at her scheduled trial on the trafficking-in-methamphetamine charge on August 27, 2018. When Brady failed to appear, the circuit court issued a show-cause order to the circuit clerk,

1180002

the Mobile County sheriff, "and/or" the warden of the Mobile County jail seeking an explanation as to why Brady was released from jail despite the fact that the circuit court had revoked her bond.

Both the circuit clerk and the warden appeared at a show-cause hearing conducted on September 12, 2018.¹ The warden testified that he never received notice from the circuit clerk's office that Brady's bond had been revoked; therefore, he says, Brady was allowed to leave the county jail when she posted bond approximately five days after the circuit court revoked her bond. The circuit clerk testified that an employee in her office had properly entered the circuit court's order revoking Brady's bond before Brady was released from the county jail but that employee apparently failed to send notice of the order to the county jail. The circuit clerk explained that this mistake occurred because she did not have the ability to fully train her employees before giving them the responsibility of managing a circuit judge's docket; ultimately the problem, according to the circuit clerk, was that she did not have adequate funding to retain well trained

¹The circuit court indicated that it found it unnecessary to have the sheriff present at the show-cause hearing.

1180002

employees or to hire a sufficient number of employees to allow her office to function as required by law.²

The circuit court submitted several exhibits into evidence at the show-cause hearing. One of those exhibits was a manpower study performed by the Administrative Office of Courts, which noted that, in fiscal year 2016, the clerk's office for the Mobile Circuit Court should have had 57.7 employees based on the caseload of the Mobile Circuit and District Courts.³ The circuit clerk testified that, as a result of the lack of funding, she had only 38 people working in her office. The circuit clerk further testified that the lack of "reasonable and adequate funding" for her office has had an impact on the public safety of the citizens of Mobile County. As examples, she explained that there had been other times individuals had been inadvertently released from jail and that, in one instance, someone had been wrongfully arrested because an employee in the circuit clerk's office failed to recall a warrant.

²See, e.g., § 12-17-94, Ala. Code 1975 (setting forth the "duties generally" of the circuit clerk).

³The circuit court indicated that the study for fiscal year 2016 was the most recent manpower study available.

1180002

The circuit clerk testified that, pursuant to certain statutes and legislative enactments, she collects certain court costs and fees and then remits a portion of those funds to the State for inclusion in the General Fund.⁴ The circuit court introduced another exhibit that indicated that over \$7 million in court costs and fees had been collected by the circuit clerk from litigation in Mobile County in fiscal year 2016.⁵

After questioning by the circuit court, the circuit clerk agreed that her office was "underfunded" and that the lack of funding made it difficult for her and the judges in her circuit to perform their constitutionally required duties. The circuit clerk testified that she had to take certain measures in her office to help her employees perform the duties of the clerk that are required by law. For example, she stated that her employees do not answer telephone calls to the circuit clerk's office until after 2:30 p.m. and that she has to close her entire office for lunch from 12:00 p.m. to 1:00 p.m.; the circuit clerk testified that those actions have

⁴See, e.g., § 12-19-72, Ala. Code 1975.

⁵As noted above, only a portion of those funds were required to be remitted to the General Fund.

1180002

caused the citizens of Mobile County to become very upset when they cannot reach anyone in the circuit clerk's office.

At the conclusion of the hearing, the circuit court stated:

"I will take no further action on this show-cause order with respect to the warden of the Mobile County jail, the sheriff, and/or the ... circuit clerk.

"However, this court reserves its right to take further actions regarding funding and the reasonable and necessary and adequate funding that is absent from the 13th [Judicial] Circuit."

Respondent's brief, exhibit A, at 38-39.

On September 24, 2018, the circuit court entered an order declaring unconstitutional, as applied, Act No. 1992-227, Ala. Acts 1992; Act No. 2004-636, Ala. Acts 2004; Act No. 2010-438, Ala. Acts 2010; Act No. 2012-535, Ala. Acts 2012; Act No. 2013-193, Ala. Acts 2013; and §§ 12-19-72 and 32-5A-191, Ala. Code 1975, "and any other Alabama act or statute that requires the ... circuit clerk to remit costs collected in Mobile County -- from litigation taking place in Mobile County -- to the state general fund." Petition, exhibit 1. The order specified that those statutes and acts are unconstitutional as applied to "the citizens of Mobile County."

1180002

The circuit court found that the office of the circuit clerk was not reasonably or adequately funded; that court costs and fees collected from litigation in Mobile County generated more than \$7 million in revenue for the State; that the circuit clerk "is in imminent danger of not fulfilling her constitutional and statutory duties to support" the circuit and district courts in the 13th Judicial Circuit; that the constitutional requirement of reasonable and adequate financing for the court system encompasses various administrative costs necessary to deliver constitutionally mandated judicial services; that, because the circuit clerk's office is not reasonably and adequately funded, the constitutional rights of all litigants in the 13th Judicial Circuit are in jeopardy; that, because the circuit clerk's office is not reasonably and adequately funded, an individual who is a danger to the citizens of Mobile County was inadvertently released from jail; and that

"[a]ny statute or act that charges litigants in Mobile County ... any fee involving litigation, which then takes said funds away from this county leaving the [circuit] clerk and her staff underfunded, thereby causing the inadvertent release of someone who is a danger and a threat of harm to the citizens of Mobile County, is unconstitutional as applied."

1180002

Petition, exhibit 1 (emphasis in original).

In addition to declaring the above-cited acts and statutes unconstitutional, the circuit court also issued an injunction ordering the circuit clerk "to withhold 10% of the court fees and costs collected from litigants in Mobile County starting October 1, 2018, continuing month to month until such time as the State of Alabama has adequately and reasonably funded her office." The circuit court authorized the presiding judge of the 13th Judicial Circuit to hold the funds the circuit clerk was ordered to withhold and then ordered the presiding judge to use those funds to pay salaries and benefits "for up to 19.7 support personnel for the ... circuit clerk's office as required by the [Administrative Office of Courts] manpower study." The order further provided that the

"injunction will terminate upon the ... circuit clerk's (or her successor's) declaration to the undersigned (or his successor) that she has been reasonably and adequately funded by the State, and that she has not had to look for local earmarks or otherwise go begging for funds to pay her personnel that the state should allocate to the Judicial Branch of government and her office."

In conclusion, the circuit court stated:

"Given this injunction concerns money collected as court costs per various Alabama Acts and statutes, the circuit clerk ... is directed to provide notice

1180002

of this injunction to the Alabama Attorney General, to the Presiding Judge, 13th circuit, and to herself per the Alabama Rules of Civil Procedure Rule 65 and Rule 5. See Ala. R. Civ. P., Rule 65(d)(2)."

Upon receiving notice of the order, the Attorney General, acting on behalf of the State, filed a petition for a writ of mandamus in this Court on October 1, 2018, seeking an order vacating the September 24, 2018, order.⁶

Standard of Review

Initially, we note that a petition for a writ of mandamus is the appropriate avenue for obtaining relief under the profoundly unusual procedural posture presented by this case. Although the September 24 order was entered after the circuit court conducted a show-cause hearing, the circuit court did not hold anyone in contempt; therefore, Rule 33.6, Ala. R. Crim. P., which provides for an appeal from an order holding

⁶Along with its petition, the State filed a motion to stay the September 24 order pending resolution of its petition; this Court granted that motion on October 5, 2018, and stayed "[a]ll circuit court proceedings ... pending further order of this Court." In the October 5 order issuing a stay, this Court also ordered the circuit clerk to "immediately remit, in accordance with all applicable state laws, any funds withheld pursuant to the circuit court's September 24, 2018, injunctive order." With the issuance of this opinion vacating the material parts of the September 24 order, we are lifting that stay.

1180002

someone in contempt, is not applicable. Further, although Rule 4(a)(1)(A), Ala. R. App. P., provides for an appeal of an interlocutory injunction, Brady -- who appears to have no interest in the issues addressed in the September 24 order -- would have been the only named appellee tasked with defending the circuit court's order. The September 24 order was, at the time it was entered, an interlocutory order purporting to award civil, equitable relief in the context of a pending criminal proceeding. However, no party to the criminal proceeding below sought the equitable relief that was awarded; therefore, there is no party to appear before this Court to defend the circuit court's order. However, Rule 21(b), Ala. R. App. P., provides that the judge in the proceeding below is a respondent to a petition for a writ of mandamus, which allows the circuit court in this case to file a response to the State's petition and to defend its September 24 order. Further, the State challenges the circuit court's subject-matter jurisdiction to enter the September 24 order, and this Court has routinely considered the alleged absence of subject-matter jurisdiction in a lower-court proceeding as a basis for seeking mandamus review. See Ex parte Progressive Specialty

1180002

Ins. Co., 31 So. 3d 661, 663 (Ala. 2009). Accordingly, we conclude that a petition for a writ of mandamus is the appropriate avenue by which to seek appellate review of the September 24 order.

"The standard of review applied to a petition seeking the issuance of a writ of mandamus is well settled:

"Mandamus is a drastic and extraordinary writ, to be issued only where there is (1) a clear legal right in the petitioner to the order sought; (2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so; (3) the lack of another adequate remedy; and (4) properly invoked jurisdiction of the court."

Ex parte Caremark Rx, LLC, 229 So. 3d 751, 756 (Ala. 2017) (quoting Ex parte Integon Corp., 672 So.2d 497, 499 (Ala. 1995)).

Analysis

The State contends that the circuit court was without authority to enter an order deciding a question not presented to it by the parties, that the September 24 order violated basic requirements of due process, that the order violated the separation-of-powers doctrine, that the order violated the doctrine of sovereign immunity, and that no party before the

1180002

circuit court in the underlying criminal case had standing to challenge the acts and statutes at issue. We first consider whether the circuit court had authority to hold certain acts and statutes unconstitutional and to enjoin the circuit clerk and the presiding judge of the 13th Judicial Circuit, despite the fact that no party before the circuit court asked the court to consider the constitutionality of those acts and statutes or to issue such an injunction.

Initially, we note that it is undisputed that the circuit court had subject-matter jurisdiction over the felony indictment the State filed against Brady and that the circuit court had authority, pursuant to Rule 33, Ala. R. Crim. P., to conduct a contempt proceeding during the course of that underlying criminal proceeding to determine if an order of the court had been violated. We are concerned in this case only with whether the circuit court had authority to declare certain acts and statutes unconstitutional and to issue an injunction based on that declaration. See Russell v. State, 51 So. 3d 1026, 1028 (Ala. 2010) ("In determining a court's subject-matter jurisdiction, 'we ask only whether the trial court had the constitutional and statutory authority' to hear

1180002

the case." (quoting Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006)).

In the September 24 order, the circuit court indicated that it was acting pursuant to the authority given it in § 6-6-222, Ala. Code 1975, which is part of the Declaratory Judgment Act, § 6-6-220 et seq., Ala. Code 1975. Section 6-6-222 provides:

"Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment is requested. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment."

Although § 6-6-222 generally gives a circuit court broad statutory authority -- i.e., subject-matter jurisdiction -- to "declare rights, status, and other legal relations whether or not further relief is or could be claimed," it plainly does not give a circuit court authority to "declare rights, status, and other legal relations" when no party has invoked the court's jurisdiction to seek any declaration of rights whatsoever. The materials before this Court clearly indicate that no party before the circuit court invoked the circuit

1180002

court's jurisdiction under the Declaratory Judgment Act or otherwise asked the circuit court to declare the party's rights, status, and other legal relations. Given that no party invoked the circuit court's jurisdiction to enter a declaratory judgment, there simply was no case, i.e., no declaratory-judgment action, pending before the circuit court that gave it authority to enter such a declaration of rights. Thus, although a circuit court generally has subject-matter jurisdiction to enter a declaratory judgment under the Declaratory Judgment Act when one is sought by a litigant, a circuit court has no authority to do so when no party has invoked its jurisdiction for that purpose. Cf. Chapman v. Gooden, 974 So. 2d 972, 984-87 (Ala. 2007) (holding that the trial court exceeded its authority in awarding declaratory relief beyond the relief requested by the parties in a pending declaratory-judgment action and holding further that that part of the trial court's order awarding such relief was void).

In its answer to the State's petition, the circuit court argues that lack of funding directly affected the underlying criminal case, the 13th Judicial Circuit, the citizens in the 13th Judicial Circuit, and the proper administration of

1180002

justice; therefore, the circuit court contends, it had "inherent authority" to enter the September 24 order holding certain acts and statutes unconstitutional.⁷ Thus, the circuit court suggests that it had "inherent authority" to exercise powers under the Declaratory Judgment Act without any party actually invoking the circuit court's jurisdiction to do so. We disagree. This Court has long held that "[t]here must be a bona fide existing controversy of a justiciable character to confer upon the court jurisdiction to grant declaratory relief under the declaratory judgment statutes.'" Chapman v. Gooden, 974 So. 2d at 983 (quoting State ex rel. Baxley v. Johnson, 293 Ala. 69, 73, 300 So. 2d 106, 110 (1974)). "'The declaratory judgment statutes do not empower courts to decide moot questions, abstract propositions or to give advisory opinions, however convenient it might be to have

⁷To support this assertion, the circuit court cites Taylor v. Taintor, 83 U.S. 366, 370 (1872), which concerned whether a surety on a bail bond was liable for the defendant's failure to appear at trial, which failure was the result of the defendant's arrest and incarceration in another state. It is unnecessary to address any particular holding in Taylor; suffice it to say, nothing in Taylor supports the circuit court's suggestion that it had "inherent authority" to declare certain acts and statutes unconstitutional when no party invoked the circuit court's jurisdiction under the Declaratory Judgment Act and asked it to make such a declaration.

1180002

the questions decided for the government of future cases.""
Wallace v. Burluson, 361 So. 2d 554, 555 (Ala. 1978) (quoting
State ex rel. Baxley, 293 Ala. at 73, 300 So. 2d at 110,
quoting in turn Alabama-Tennessee Nat. Gas Co. v. City of
Huntsville, 275 Ala. 184, 192, 153 So. 2d 619, 626 (1963)
(emphasis added)).

"'Actions or opinions are denominated
"advisory,"' and, therefore, not justiciable, 'when
there is an insufficient interest in the plaintiff
or defendant to justify judicial determination,
where the judgment sought would not constitute
specific relief to a litigant ... or where, by
reason of inadequacy of parties defendant, the
judgment could not be sufficiently conclusive.' E.
Borchard, Declaratory Judgments 31 (1934) "'The
absence of adversary or the correct adversary
parties is in principle fatal. A mere difference of
opinion or disagreement or argument on a legal
question affords inadequate ground for invoking the
judicial power.'" [Rogers v. Alabama Bd. of Educ.,
392 So. 2d 235, 237 (Ala. Civ. App. 1980)] (emphasis
added)."

Stamps v. Jefferson Cty. Bd. of Educ., 642 So. 2d 941, 944
(Ala. 1994) (first emphasis added; some emphasis omitted). See
also Reid v. City of Birmingham, 274 Ala. 629, 639, 150 So. 2d
735, 744 (1963) (noting that, if there is no controversy, or
"conflicting interests," between the plaintiff and a
defendant, "'the case is likely to be characterized as one for
an advisory opinion, ... and hence not justiciable'" (quoting

1180002

E. Borchard, Declaratory Judgments 29-30)). ""'Unless the trial court has before it a justiciable controversy, it lacks subject matter jurisdiction and any judgment entered by it is void ab initio.'''' Chapman, 974 So. 2d at 983-84 (quoting Sustainable Forests, L.L.C. v. Alabama Power Co., 805 So. 2d 681, 683 (Ala. 2001), quoting in turn other cases).

Thus, the very nature of a declaratory-judgment action, including the requirement that there be some controversy between adversary parties to confer jurisdiction upon a court to make a declaration, does not allow for the type of "inherent authority" the circuit court suggests it had in the present case. We conclude, therefore, that the circuit court was without authority -- inherent or otherwise -- to enter a judgment declaring certain acts and statutes unconstitutional and to enter an injunction when no party had invoked the circuit court's jurisdiction to seek such relief.

To the extent the circuit court suggests that its authority to conduct contempt proceedings gave it authority to declare certain acts and statutes unconstitutional, we disagree. There is no question that the circuit court had authority, pursuant to Rule 33, Ala. R. Crim. P., to issue a

1180002

show-cause order, to hold a show-cause hearing, and, if necessary, to hold someone in contempt for violating an order of the circuit court. However, the circuit court did not hold anyone in contempt. Indeed, the circuit court stated on the record that no action would be taken on the show-cause order, but the circuit court purportedly reserved "its right to take further actions" to address the lack of funding in the 13th Judicial Circuit -- an issue no party asked the circuit court to address. By finding unconstitutional any act or statute that requires the circuit clerk to remit any part of court costs or fees collected from litigation in Mobile County to the State's General Fund, the circuit court went far beyond its authority to conduct a contempt proceeding. Accordingly, we conclude that the circuit court's authority to conduct a contempt proceeding did not give the circuit court authority to, sua sponte, hold unconstitutional any act or statute that requires the circuit clerk to remit any part of court costs or fees collected from litigation in Mobile County to the State's General Fund.

Conclusion

Accordingly, we conclude that the circuit court exceeded its authority in the underlying criminal proceeding in

1180002

purporting to award declaratory and injunctive relief no party had requested. Thus, the September 24 order holding certain acts and statutes unconstitutional, ordering the circuit clerk to withhold 10% of the funds collected from court costs and fees as required by law until the circuit clerk's office is "adequately and reasonably funded," and ordering the presiding judge of the 13th Judicial Circuit to use those funds to hire additional personnel in the clerk's office is due to be vacated. We grant the State's petition and issue the writ of mandamus. We lift the stay of the underlying criminal case this Court issued on October 5, 2018.

PETITION GRANTED; WRIT ISSUED.

Shaw, Sellers, Mendheim, and Mitchell, JJ., concur.

Parker, C.J., and Bolin, J., concur specially.

Wise, J., recuses herself.

1180002

PARKER, Chief Justice (concurring specially).

I concur fully with the main opinion and its narrow holding that the Mobile Circuit Court, in the context of the underlying criminal case in which no parties before the circuit court sought declaratory or injunctive relief, lacked any authority to enter either the judgment declaring certain acts and statutes unconstitutional as applied or the injunction. I strongly disagree with the overreaching actions of the circuit court, and I write separately to emphasize that the circuit court's actions directly contravene the judiciary's role in securing adequate funding of the Unified Judicial System of the State of Alabama, including the 13th Judicial Circuit.

The Alabama Constitution requires that "[a]dequate and reasonable financing for the entire unified judicial system shall be provided" and that "[a]dequate and reasonable appropriations shall be made by the legislature for the entire unified judicial system, exclusive of probate courts and municipal courts." Art. VI, § 149, Ala. Const. 1901 (Off. Recomp.). This Court has held that § 149 requires that judicial funding "cannot be reduced below what is 'adequate and reasonable' ... for the performance of those duties that

1180002

are constitutionally required of the Judiciary." Folsom v. Wynn, 631 So. 2d 890, 895 (Ala. 1993).

"The Judiciary is a separate, independent, and co-equal branch of government, and the United States Constitution and the Constitution of Alabama describe its duties at some length. Cases from the United States Supreme Court and cases from this Court have further defined those services that are constitutionally required of the Judiciary for the benefit of the people. Without attempting to list every specific duty that is constitutionally required of the Judiciary, we note that the courts are, in many respects, the means by which the people of this nation assure their most fundamental individual rights. ..."

631 So. 2d at 897. The rights vested in Alabama citizens, in turn, require a judiciary with sufficient resources to protect and guarantee those rights.

"Moreover, the Alabama Constitution specifically requires the courts to be open and to be the avenue through which every person in this State may seek a remedy for an injury. Ala. Const. Art. I, § 13. The constitutional duty of the courts in this State is that they be available for the delivery of justice, and they are constitutionally required to deliver justice with due process of law. Absent adequate and reasonable judicial resources, the people of our State are denied their constitutional rights."

631 So. 2d at 898-99.

The constitutional requirement that the courts of this State be adequately and reasonably funded is not a dead letter. This Court has repeated with approval the forceful

1180002

dissent in Morgan County Commission v. Powell, 292 Ala. 300, 293 So. 2d 830 (1974), by Chief Justice Howell Heflin, a champion of the reorganization of the Alabama Judicial System wrought by the then new Judicial Article of the Alabama Constitution: "'[I]t seems clear that adequate and reasonable financing of the court system of this state is a constitutional priority for nowhere else in the Constitution do the words "adequate and reasonable" appear in relationship to financing and appropriations.'" Folsom, 631 So. 2d at 899-900 (quoting Morgan Cty. Comm'n, 292 Ala. at 326, 293 So. 2d at 854-55 (Heflin, C.J., dissenting)). The mandate set forth in § 149, however, is not directed solely to the legislative branch:

"Not only is the Legislature required to make adequate and reasonable appropriations for the entire judicial system under § 6.10 [now § 149]; all three branches are charged with a constitutional duty to ensure adequate and reasonable financing for the Judiciary. Plainly, the constitutional requirement of reasonable and adequate financing encompasses the various administrative costs, including equipment and personnel, necessary to deliver constitutionally mandated judicial services. At a constitutional minimum, therefore, appropriations to the Judiciary may not be reduced by operation of [proration statutes] or any other enactment to such a level that the Judiciary is not adequately and reasonably funded for the performance of its constitutionally mandated obligations."

1180002

Folsom, 631 So. 2d at 900 (emphasis added). Chief Justice Heflin emphasized that our tripartite form of government lays the burden of ensuring constitutionally sufficient funding of the judicial system on all branches:

"If the judicial system is to be a truly co-equal and independent branch answerable only to the sovereign--the people--then it must have the power to maintain itself under exigent circumstances. Certainly in the usual situation it is not necessary for courts to exercise any extraordinary power since the other great branches of government are also charged with the constitutional duty to provide for an effective judiciary. It is only when the other branches are remiss in their constitutional duties that the court must act to preserve the efficient administration of justice."

Morgan Cty. Comm'n, 292 Ala. at 319, 293 So. 2d at 847 (Heflin, C.J., dissenting) (quoted with approval in Folsom, 631 So. 2d at 899).

This Court today in no respect speaks to whether the judicial system is adequately funded, for the same reason it issues the writ of mandamus: that issue was not before the circuit court. The constitutional mandate for adequate and reasonable funding of the judiciary does not provide authority for a circuit judge (or any other member of the judiciary) to sua sponte reach beyond the case or controversy before the court to unilaterally fashion remedies no party has requested. As this Court recognized in Folsom: "[E]ven as the Judiciary

1180002

is one of the three separate branches of government, it is also a part of government, and as a part of government, the Judiciary must cooperate in every way possible with the Legislature as it performs its difficult task of allocating limited resources." 631 So. 2d at 900. As judges, we are bound by the law even as we enforce it.

1180002

BOLIN, Justice (concurring specially).

I fully concur with the scholarly analysis of the main opinion as it describes the unorthodox actions of the circuit-court judge in what began as a criminal proceeding. I write specially to note that, although a circuit court in Alabama exercises general jurisdiction in all cases except as may be otherwise provided by law, a circuit court can exceed its authority, as did the circuit court in this case.

First, this case began as a criminal prosecution of Mandy Nicole Brady, who was accused of trafficking in methamphetamine, a violation of § 13A-12-231(11)(a), Ala. Code 1975, but was soon contorted into a civil proceeding -- complete with an injunction against the circuit clerk and presiding judge of the Mobile Circuit Court and a constitutional challenge to statutes imposing court fees. Second, the circuit-court judge, in addressing an issue that was extant to the criminal proceeding before it, unilaterally created an adversarial civil proceeding, without paying a filing fee, essentially as an unnamed plaintiff, while simultaneously acting as the judge in the case. Third, the circuit-court judge usurped legislative power by determining how state moneys are to be appropriated and spent, without a

1180002

proper case before him. Fourth, the circuit-court judge declared a state statute unconstitutional without notifying the attorney general that the constitutionality of the statute was being questioned. As far as the State knew, this was a criminal prosecution, and the circuit-court judge was inquiring as to why a prisoner had inadvertently been set free after her bail had been revoked. The State did not have a scintilla of notice that court-fee statutes would be addressed in this case. Fifth, the circuit-court judge converted the criminal action brought by the State into an action proceeding effectively against the State.

In constitutional terms, the circuit-court judge's actions violated due process and fair play, because no one or no entity had filed a complaint challenging the court-fee statutes the circuit-court judge, on his own motion, ruled to be unconstitutional. See Chapman v. Gooden, 974 So. 2d 972 (Ala. 2007) (holding that the essentials of due process and fair play require the court to consider only those issues made by the pleadings and that the judgment may not extend beyond such issues nor beyond the scope of the relief demanded). The circuit court did not have the "inherent power" to declare the court-fee statutes unconstitutional when

1180002

no party before the court was seeking such relief. Alabama Power Co. v. Citizens of the State, 740 So. 2d 371, 381 (Ala. 1999) ("[T]he Constitution vests [the courts] with a limited judicial power that entails the special competence to decide discrete cases and controversies involving particular parties and specific facts. Ala. Const. 1901, amend. 328, § 6.01 [now § 139 (Off. Recomp.)] (vesting judicial power in the Unified Judicial System); see, e.g., Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969) (stating that courts decide only concrete controversies between adverse parties). In short, this Court has neither the constitutional license nor the institutional competence to substantively reevaluate economic legislation."). The circuit-court judge's actions went both beyond his authority and beyond the pale, violating the separation-of-powers doctrine, when the circuit court effectively amended the state court-fee statutes without a proper case before it, thereby effectively assuming legislative powers of enactment and appropriation. See State v. Estate of Yarbrough, 156 So. 3d 947, 954 (Ala. 2014) ("Art. III, § 43.01, Ala. Const. 1901 (Off. Recomp.), states, in pertinent part: 'No order of a state court, which requires disbursement of state funds, shall be binding on the state or

1180002

any state official until the order has been approved by a simple majority of both houses of the Legislature.' See Ex parte James, 836 So. 2d [813] at 815 [(Ala. 2002)] (stating that § 43.01 nullifies 'any "order of a state court, which requires disbursement of state funds, ... until the order has been approved by a simple majority of both houses of the Legislature"'). Further, Art. IV, § 72, Ala. Const. 1901, states, in pertinent part: 'No money shall be paid out of the treasury except upon appropriations made by law ..., ' i.e., approved by the Legislature. Ex parte James, 713 So. 2d 869, 903 (Ala. 1997) (Hooper, C.J., dissenting) ('Article III, § 72, Ala. Const. 1901, provides that no money shall be paid out of the treasury except upon appropriation, made by law, i.e., passed by the Legislature.'). See also 63C Am. Jur. 2d Public Funds § 34 (1997) ('The power to appropriate public funds for specific purposes and to reduce appropriations is solely a legislative power.' (quoted with approval in McInnish v. Riley, 925 So. 2d 174, 179 (Ala. 2005)))."). The circuit-court judge ignored the sovereign immunity of the State by addressing constitutional questions that were not part of the criminal case before him and entering an order directly affecting moneys in the state treasury. See Ex parte Bentley,

1180002

116 So. 3d 201 (Ala. 2012) (reaffirming that an action may be barred by Ala. Const. 1901, § 14, if the action seeks to recover damages in the form of funds from the state treasury).

As the State noted in its petition for the writ of mandamus, many, if not all of, state agencies and departments wish they could receive more funding from the legislature, each having the proper motive of better serving the State's citizenry. Nevertheless, the circuit-court judge's actions in seeking to address additional funding for the circuit in which he sits, in a judicially inappropriate manner, were an insult to the numerous circuit judges who follow the law, as well as to the citizens of the State of Alabama who expect, and deserve, more from its judiciary.